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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

RYAN BRADY COMBS,

Defendant and Appellant.

C087042

(Super. Ct. No. 15F02263)

During a purported motorcycle race with defendant Ryan Brady Combs, the victim died when his motorcycle collided with a car. A jury found defendant guilty of gross vehicular manslaughter and unlawfully engaging in a motor vehicle speed contest proximately causing bodily injury. On appeal, he contends: (1) there was insufficient evidence to support his conviction for engaging in a speed contest; and (2) the trial court erred in excluding evidence that the victim had methamphetamine in his system at the time of his death. We will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

While waiting in his car at a red light, a witness saw a motorcycle driven by the victim, weaving through cars and heard him revving his engine. The victim's motorcycle pulled up next to defendant's motorcycle, which was already stopped at the light. The two motorcyclists acknowledged each other and revved their engines; when the light turned green, they departed at the same time at high speeds. The witness believed the two motorcyclists were racing. A second witness also believed they were racing.

Less than 10 seconds before the collision, the motorcyclists rapidly passed another driver, who was driving at the speed limit of 40 miles per hour, within a few seconds of each other; the driver estimated they were speeding between 55 and 70 miles per hour and believed they were racing. The driver then saw another car in the roadway and saw the victim turn his head and look behind him just before colliding with the car; she believed he was looking for the other motorcycle. Mary B. was preparing to back into her driveway on that road when she heard the victim's motorcycle squeal before colliding with her driver's side door. Defendant did not have time to stop and laid his motorcycle on the pavement and slid alongside it, colliding with Mary B.'s car about three seconds after the first collision. Another witness informed the investigating officer that the motorcycles were racing at speeds of 95 to 100 miles per hour. Based on the witness statements and tire friction marks, the officer concluded that the two motorcycles were racing at very high speeds prior to the collision.

In his defense, defendant testified that he was not in a race but was independently speeding to get home because his girlfriend had left him voicemails indicating she was taking her daughter to the hospital.

Following a trial, the jury found defendant guilty of gross vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)), and unlawfully engaging in a motor vehicle speed

contest proximately causing bodily injury (Veh. Code, § 23109.1).¹ The trial court sentenced him to an aggregate prison term of two years eight months.

DISCUSSION

I

Sufficiency of the Evidence

Defendant contends the evidence was insufficient to show he was engaged in a speed contest rather than simply speeding independently. We disagree.

In reviewing a challenge to the sufficiency of the evidence supporting a conviction, we “review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) “[I]t is the jury, not the appellate court which must be convinced of the defendant’s guilt beyond a reasonable doubt. ‘If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.’” (*People v. Bean* (1988) 46 Cal.3d 919, 933.)

Section 23109, subdivision (a) provides in relevant part: “A person shall not engage in a motor vehicle speed contest on a highway. As used in this section, a motor vehicle speed contest includes a motor vehicle race against another vehicle” Circumstantial evidence of a person revving his engine and driving neck and neck with another car at high speeds provides substantial evidence of a speed contest. (*In re Harvill* (1959) 168 Cal.App.2d 490.) In *Harvill*, the court explained: “[T]here was sufficient substantial evidence presented by the traffic officer from which the court could reasonably infer that [the defendant] by ‘revving up’ his engine and by speeding at a rate

¹ Further undesignated statutory references are to the Vehicle Code.

of 55-60 miles per hour was exhibiting or displaying the speed of his car to the female occupants of the [other car]. The testimony of the officer that he saw the cars running ‘neck and neck’ at a speed of 50-55 miles per hour in a 35-mile zone and that [the defendant’s] car caught up with and passed the [other car], and other circumstances, are sufficient to support the ‘speed contest’ charge.” (*Id.* at p. 493; see also *Tischhoff v. Wolfchief* (1971) 16 Cal.App.3d 703, 706 [vehicles departing at the same time and traveling side by side at 70 miles per hour in a 30-mile zone “reasonably supports a conclusion they were either racing or indulging in a bit of automotive skylarking, goading each other to excessive speed”].)

Here, two witnesses saw defendant and the victim speed away from the intersection at the same time and believed they were racing. Like the defendant in *Harvill*, defendant and the victim were revving their engines before departing the intersection together at high speeds. An additional witness to the collision saw them rapidly pass her at high speeds, with defendant following just a few seconds behind the victim; she also believed that they were in a race. She saw the victim turn his head and look for defendant’s motorcycle just before the collision. A fourth witness saw them traveling at high speeds and also believed they were racing. The investigating officer concluded that tire friction marks supported the witness statements that the two motorcycles were racing at very high speeds prior to the collision. These circumstances together provided substantial evidence that defendant was engaged in a race with the victim, rather than merely speeding independently at the same time and place.

II

Exclusion of Victim’s Toxicology Evidence

Prior to trial, the prosecution moved in limine to exclude evidence that the victim had methamphetamine in his blood at the time of the accident as well as any expert testimony thereon, arguing it was irrelevant because contributory negligence is not a defense to a crime. The trial court granted the motion, ruling the evidence was irrelevant

and unduly prejudicial and reasoning that the “evidence about the victim’s methamphetamine use would only come in if it was evidence of a disconnected, unforeseen, and unforeseeable intervening act, an abnormal occurrence, and that abnormal occurrence would have been the sole cause of the injury or harm.” Defendant renewed his request to admit the evidence at the close of the prosecutor’s case, and the court denied it. Defendant challenges this ruling, contending that the toxicology report and expert testimony about it would have allowed the jury to conclude that the methamphetamine the victim ingested was a superseding cause of the collision and his death. We disagree.

We review the trial court’s ruling on the admissibility of evidence for abuse of discretion, and we will not reverse absent a showing the court “exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.) “In criminal prosecutions, the contributing negligence of the victim or a third party does not relieve the criminal actor of liability, unless the victim’s or third party’s conduct was the *sole* or *superseding* cause of the death.” (*People v. Autry* (1995) 37 Cal.App.4th 351, 360.) To constitute a sole or superseding cause, the victim’s conduct must have been “so unusual, abnormal, or extraordinary that it could not have been foreseen.” (*People v. Schmies* (1996) 44 Cal.App.4th 38, 52 (*Schmies*).) Absent such conduct, evidence the victim “may have shared responsibility or fault for the accident does nothing to exonerate [a] defendant for his [or her] role” and “is not relevant.” (*Id.* at p. 51.) “[A] defendant whose conduct was a proximate cause of harm is not absolved of responsibility because another person’s conduct, negligent or otherwise, is also a substantial or contributing factor in causing the harm.” (*People v. Brady* (2005) 129 Cal.App.4th 1314, 1328 (*Brady*).)

In *Brady*, the defendant recklessly set a forest fire and was convicted of causing the deaths of two firefighter pilots who collided in midair while fighting the fire. (*Brady, supra*, 129 Cal.App.4th at p. 1318.) On appeal, he argued the court erred in excluding

evidence of a pilot's toxicology report. (*Id.* at p. 1332.) The court reasoned the deaths were a foreseeable consequence of the defendant's conduct: "The relevant question is whether, when recklessly starting the forest fire, [the defendant] could reasonably anticipate that aircraft would be summoned to extinguish the fire and that a fatal collision might result. The question is not whether [the defendant] could reasonably anticipate other causes that might also contribute to the collision." (*Id.* at p. 1334.) Similarly, in *People v. Kemp* (1957) 150 Cal.App.2d 654, the defendant was in a speed race with his codefendant when the latter hit a third car that crossed their path. (*Id.* at pp. 656-657.) The court reasoned: "The evidence here strongly indicates that [the defendants] were inciting and encouraging one another to drive at a fast and reckless rate of speed on a residence street and as they closely approached a blind intersection. . . . They were both violating several laws, [and] the acts of both led directly to and were a proximate cause of the result" (*Id.* at p. 659.)

Here, defendant has not shown that his own conduct was not a substantial factor or that the victim's conduct was the sole or superseding cause of the collision. Just as in *Kemp*, there is substantial evidence that both defendant and the victim were inciting each other to drive recklessly and both were violating several laws. Defendant's act of participating in this speed contest with the victim precipitated the foreseeable collision. Whether the victim's participation was influenced by the drugs in his system is irrelevant where it does not break the chain of causation and absolve defendant for his part in a mutual race. (See *Schmies, supra*, 44 Cal.App.4th at p. 49.) That defendant's fellow participant in the reckless high-speed race may have been driving under the influence was entirely foreseeable, and defendant could reasonably anticipate that a fatal collision might result. (See *Brady, supra*, 129 Cal.App.4th at p. 1334.) Under these facts, the victim's

drug use while mutually racing with defendant was not an unforeseeable superseding cause. Accordingly, the trial court did not err in excluding the irrelevant evidence.²

DISPOSITION

The judgment is affirmed.

RAYE, P. J.

We concur:

BUTZ, J.

MURRAY, J.

² Defendant also seems to claim that the victim's methamphetamine use offered an alternative explanation for his behavior—the victim was driving fast and recklessly because he was under the influence of methamphetamine, not because he was racing with defendant. But the victim's drug use would not explain defendant's own driving behavior in relationship to the victim. Nor would evidence of methamphetamine use have been helpful in determining the victim's motivation. The witnesses observed a speed contest between two cyclists. The trial court was not compelled to allow the jury to speculate on what role, if any, the methamphetamine found in the victim's blood played in the victim's driving conduct. The toxicology evidence would have produced more confusion than insight.